

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

**ALONZO C. WILLIAMS V. STATE OF TENNESSEE and CHERRY
LINDAMOOD, WARDEN**

**Appeal from the Circuit Court for Wayne County
No. 13990 Robert L. Jones, Judge**

No. M2006-01681-CCA-R3-HC - Filed November 28, 2006

This matter is before the Court upon the State's motion to affirm the judgment of the trial court by memorandum opinion pursuant to Rule 20, Rules of the Court of Criminal Appeals. The petitioner, Alonzo Williams, has appealed the trial court's order summarily dismissing his petition for the writ of habeas corpus. In that petition, the petitioner sought a writ of habeas corpus to release him from his sentence. We are persuaded that the trial court was correct in summarily dismissing the habeas corpus petition and that this case meets the criteria for affirmance pursuant to Rule 20, Rules of the Court of Criminal Appeals. Accordingly, the State's motion is granted, and the judgment of the trial court is affirmed.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Trial Court is Affirmed.

JERRY L. SMITH, J., delivered the opinion of the court, in which DAVID H. WELLES, and ROBERT W. WEDEMEYER, JJ., joined.

Alonzo Williams, Pro Se, Clifton, Tennessee.

Paul G. Summers, Attorney General & Reporter; Benjamin A. Ball, Assistant Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

In 1983, the petitioner was convicted of two counts of third degree burglary. See Alonzo C. Williams v. State, No. 03C01-9806-CR-00203, 1999 WL 595419, at *1 (Tenn. Crim. App., at Knoxville, Aug. 10, 1999), perm. app. denied, (Tenn. Dec. 27, 1999). Because the petitioner had several prior felony convictions, the petitioner was found to be an habitual criminal and his sentences were enhanced to life terms. Id. The petitioner's convictions and life sentences were affirmed on direct appeal. See State v. Alonzo Clinton Williams, 1984 Tenn. Crim. App. Lexis 2663 (Tenn.

Crim. App., at Knoxville, Nov. 20, 1984). Subsequently, the petitioner unsuccessfully sought post-conviction relief. See Alonzo C. Williams v. State, No. 03C01-9806-CR-00203, 1999 WL 595419, at *1; Alonzo Clinton Williams, No. 1283, 1990 WL 16875, at * 1 (Tenn. Crim. App., at Knoxville, Feb. 27, 1990); Alonzo Williams v. State, No. 1100, 1987 WL 7319, at * 1 (Tenn. Crim. App., at Knoxville, Mar. 4, 1987), perm. app. denied, (Tenn. May 11, 1987).

The petitioner filed the present petition for habeas corpus relief on April 24, 2005. In that petition, the petitioner alleges that his classification as an habitual criminal offender came about as a result of illegal convictions from the State of South Carolina. The petitioner filed the petition in the Circuit Court of Wayne County, which dismissed the petition on June 6, 2006. The petitioner filed a timely notice of appeal on June 18, 2006.

A writ of habeas corpus is available only when it appears on the face of the judgment or the record that the convicting court was without jurisdiction to convict or sentence the defendant or that the defendant is still imprisoned despite the expiration of his sentence. Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993); Potts v. State, 833 S.W.2d 60, 62 (Tenn. 1992). However, if after a review of the habeas petitioner's filings the trial court determines that the petitioner would not be entitled to relief, then the petition may be summarily dismissed. Tenn. Code Ann. § 29-21-109; State ex rel. Byrd v. Bomar, 381 S.W.2d 280 (Tenn. 1964). Further, a trial court may summarily dismiss a petition for writ of habeas corpus without the appointment of a lawyer and without an evidentiary hearing if there is nothing on the face of the judgment to indicate that the convictions addressed therein are void. Passarella v. State, 891 S.W.2d 619, 627 (Tenn. Crim. App. 1994), superceded by statute as stated in State v. Steven S. Newman, No. 02C01-9707-CC-00266, 1998 WL 104492, at *1 n.2 (Tenn. Crim. App. at Jackson, Mar. 11, 1998).

A petitioner has the burden of establishing by a preponderance of the evidence that the judgment he attacks is void or that his term of imprisonment has expired. State ex rel. Kuntz v. Bomar, 381 S.W.2d 290, 291 (Tenn. 1964). If the petitioner fails to establish that his conviction is void or his term of imprisonment has expired, he is not entitled to immediate release. Passarella, 891 S.W.2d at 627-28.

The procedural requirements for habeas corpus relief are mandatory and must be scrupulously followed. Hickman v. State, 153 S.W.3d 15, 19-20 (Tenn. 2004); Archer, 851 S.W.2d at 165. The formal requirements for an application or petition for writ of habeas corpus are found at Tennessee Code Annotated section 29-21-107:

- (a) Application for the writ shall be made by petition, signed by either the party for whose benefit it is intended, or some person on the petitioner's behalf, and verified by affidavit.
- (b) The petition shall state:
 - (1) That the person in whose behalf the writ is sought, is illegally restrained of liberty, and the person by whom and place where restrained, mentioning the name of

such person, if known, and if unknown, describing the person with as much particularity as practicable;

(2) The cause or pretense of such restraint according to the best information of the applicant, and if it be by virtue of any legal process, a copy thereof shall be annexed, or a satisfactory reason given for its absence;

(3) That the legality of the restraint has not already been adjudged upon a prior proceeding of the same character, to the best of the applicant's knowledge and belief; and

(4) That it is the first application for the writ, or, if a previous application has been made, a copy of the petition and proceedings there shall be produced, or satisfactory reasons should be given for the failure to do so.

Tenn. Code Ann. § 29-21-107. "A habeas corpus court may properly choose to dismiss a petition for failing to comply with the statutory procedural requirements" Hickman, 153 S.W.3d at 21.

The petitioner herein failed to adhere to the mandatory requirements for habeas corpus petitions under Tennessee Code Annotated section 29-21-107. The petitioner falsely stated that the legality of his restraint has not been previously adjudged in prior proceedings of the same character, yet the petitioner has previously filed at least two other unsuccessful petitions for habeas corpus relief, all containing the same basic allegations as those in the present petition. See Alonzo C. Williams v. State, No. W2003-02702-CCA-R3-HC, 2004 WL 2941152 (Tenn. Crim. App., at Jackson, Dec. 16, 2004); Alonzo C. Williams v. State, No. W2004-00499-CCA-R3-HC, 2004 WL 1944142 (Tenn. Crim. App., at Jackson, Sept. 1, 2004), perm. app. denied, (Tenn. Dec. 20, 2004).

Further, the petition fails to state a colorable claim for habeas corpus relief. The petitioner does not challenge his conviction as void, but instead challenges the validity of the convictions used to enhance his sentence. Even if the petitioner's claims were valid, they would not entitle him to habeas corpus relief, they would entitle him to post-conviction relief, which he is now time-barred from seeking. State v. McClintock, 732 S.W.2d 268, 272 (Tenn. 1987). Moreover, the petitioner has already unsuccessfully pursued post-conviction relief. See Alonzo C. Williams v. State, 1999 WL 595419, at *1; Alonzo C. Williams v. State, 1990 WL 16875, at *1. Moreover, it is well-established that a defendant may not mount a collateral attack on an out-of-state conviction using the courts of this State. See U.S. Const. Art. IV § 1; Rhoden v. State, 816 S.W.2d 56, 66 (Tenn. Crim. App. 1991). The petitioner has not presented a cognizable claim for habeas corpus relief.

Rule 20, Rules of the Court of Criminal Appeals provides inter alia:

The Court, with the concurrence of all judges participating in the case, when an opinion would have no precedential value, may affirm the judgment or action of the trial court by memorandum opinion rather than by formal opinion, when:

The judgment is rendered or the action taken in a proceeding before the trial judge without a jury, and such judgment or action is not a

determination of guilt, and the evidence does not preponderate against the finding of the trial judge.

We determine that this case meets the criteria of the above-quoted rule and, therefore, we grant the State's motion filed under Rule 20, we affirm the judgment of the trial court.

JERRY L. SMITH, JUDGE